

Amendment in Reply to Phone Calls with Examiner Cho of June 16 and 18, 2009

REMARKS

This Amendment is being filed in response to telephone calls between Examiner Cho and the undersigned (Dicran Halajian) on June 16 and 18, 2009, discussing the present application. The undersigned thanks the Examiner for the courtesies extended during these telephone calls.

In response to a request for a New Abstract from Examiner Cho, the current Abstract has been deleted and substituted with the enclosed New Abstract which better conforms to U.S. practice.

Further, in response to a request from Examiner Cho to add heading to the specification, Applicant respectfully declines to add the headings as they are not required in accordance with MPEP §608.01(a), and could be inappropriately used in interpreting the specification.

In particular, section headings are not statutorily required for filing a non-provisional patent application under 35 USC 111(a), but per 37 CFR 1.77 are only guidelines that are suggested for applicant's use. (See Miscellaneous Changes in Patent Practice, Response to comments 17 and 18 (Official Gazette, August

13, 1996) [Docket No: 950620162-6014-02] RIN 0651-AA75 ("Section 1.77 is permissive rather than mandatory. . . [T]he Office will not require any application to comply with the format set forth in 1.77").

It is respectfully submitted that "should" as recited in MPEP §608.01(a) is suggestive or permissive, and not mandatory as in "must" or "shall". For example, 37 CFR 1.77(b) recites:

The specification should include the following sections in order: (Emphasis added)

Similarly, 37 CFR 1.77(c) recites:

The text of the specification sections defined in paragraphs (b)(1) through (b)(12) of this section, if applicable, should be preceded by a section heading in uppercase and without underlining or bold type. (Emphasis added)

By contrast, 37 CFR 1.77(b)(5) recites:

(5) Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on a compact disc and an incorporation-by-reference of the material on the compact disc (see § 1.52(e)(5)). The total number of compact discs including duplicates and the files on each compact disc shall be specified. (Emphasis added)

Thus, it is respectfully submitted that a distinction is made between "should" and "shall", where "should" is permissive, and

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"shall" is mandatory. Accordingly, it is respectfully submitted that headings are not required in accordance with MPEP §608.01(a).

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

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